

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

OCT 29 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0194-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JOSE LOPEZ VALDEZ,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20053608

Honorable Stephen C. Villarreal, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara La Wall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Jose Lopez Valdez

Florence
In Propria Persona

ESPINOSA, Judge.

¶1 Following a jury trial, petitioner Jose Valdez was convicted of one count of sexual conduct with a minor under the age of fifteen and two counts of child molestation, all class two felonies and dangerous crimes against children. The trial court sentenced

Valdez to a mandatory prison term of life without release eligibility for thirty-five years on the first count, to be followed consecutively by two mitigated, concurrent, ten-year prison terms on the other two counts. We affirmed Valdez's convictions and sentences on appeal. *State v. Valdez*, No. 2 CA-CR 2006-0401 (memorandum decision filed Oct. 31, 2007).¹

¶2 In 2008, Valdez filed a notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., and counsel was appointed to represent him. Unable to find any colorable post-conviction claim to raise, counsel filed a notice of review pursuant to Rule 32.4(c)(2). The trial court allowed Valdez to file a pro se petition, which it then dismissed without conducting an evidentiary hearing. This petition for review followed. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no abuse here.

¶3 Valdez claims the trial court abused its discretion by rejecting his claims of ineffective assistance of trial counsel and by finding he was precluded from raising claims that (1) a witness had testified falsely, (2) a juror had committed misconduct, and (3) his own testimony at trial was inadmissible due to a violation of his constitutional rights. To the extent Valdez's petition for post-conviction relief presented claims he could have raised on appeal, but did not, they are precluded under Rule 32.2(a).

¹Although Valdez was also referred to as Jose Angel Valdez on appeal, he filed his petition for review under the name Jose Lopez Valdez.

Moreover, as the court noted, nothing in the petition for review establishes that Rule 32.2(a) is inapplicable to Valdez's petition filed below or that he should be excused from that rule's preclusive effect. In addition, in order to state a colorable claim of ineffective assistance of counsel, a defendant must establish that counsel's performance fell below an objectively reasonable professional standard and that the deficient performance was prejudicial to the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *State v. Nash*, 143 Ariz. 392, 397, 694 P.2d 222, 227 (1985).

¶4 Although Valdez contends the trial court incorrectly found precluded his claims of ineffective assistance of counsel, the court did not do so. Indeed, the court acknowledged in its ruling that ineffective assistance claims may be raised only in post-conviction proceedings, and not on direct appeal. *See State v. Spreitz*, 202 Ariz. 1, ¶ 9, 39 P.3d 525, 527 (2002). Notably, it is unclear from Valdez's petition for post-conviction relief whether some of his claims are based on ineffective assistance of counsel or whether they are raised as independent claims that, as the court correctly ruled, are subject to preclusion. In any event, the court properly found Valdez had failed to provide support for his claims of ineffective assistance of counsel and had failed to show how trial counsel's alleged failures fell below an objective standard of reasonableness or how he was prejudiced by counsel's performance, thus supporting the court's conclusion that he had not established a colorable claim of ineffective assistance of counsel. For these same reasons, we reject Valdez's claim that he was entitled to an evidentiary hearing. *See State v. Runningeagle*, 176 Ariz. 59, 63, 859 P.2d 169, 173 (1993) (evidentiary hearing required only when petitioner states colorable claim).

¶5 Based on the record before us, we cannot say the trial court abused its discretion in denying Valdez’s petition for post-conviction relief. The court denied relief in a detailed and thorough minute entry order that clearly identified Valdez’s arguments and correctly ruled on them in a manner that will allow any future court to understand their resolution. We therefore approve and adopt the court’s ruling and see no need to reiterate it here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Accordingly, we grant the petition for review but deny relief.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge